

**FILED**

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

**UNITED STATES DISTRICT COURT**

for the

District of New Mexico

APR 07 2014 *MJ*

**MATTHEW J. DYKMAN**  
CLERK

United States of America )  
v. )  
DALE N. SMITH A.K.A FIGHTSBEAR )  
)  
)  
)  
)  
\_\_\_\_\_ )  
*Defendant(s)*

Case No. *14 mj 1141 rhs*

**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 20, 2014 in the county of Santa Fe in the New Mexico District of New Mexico, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
Count 1. 16 U.S.C., §§ 703 & 707 (B)	Migratory Bird Treaty Act
Count 2. 16 U.S.C. §§ 3373(d)(1) (b) & 3372(a)(1)	Lacey Act
Count 3. 16 U.S.C. § 668(a)	Bald and Golden Eagle Protection Act

This criminal complaint is based on these facts:

Please see attached Affidavit of Resident Agent in Charge Ariel R. Vazquez and made a part hereof.

Continued on the attached sheet.

*Ariel R. Vazquez*

*Complainant's signature*

Ariel R. Vazquez, Resident Agent in Charge, F.W.S.  
*Printed name and title*

Sworn to before me and signed in my presence.

Date: 04/07/2014

*Robert H. Scott*

*Judge's signature*

City and state: Albuquerque, New Mexico

Robert Hayes Scott, U.S. Magistrate Judge  
*Printed name and title*

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT**

**Defendant. DALE N. SMITH AKA FIGHSTBEAR**  
Gender: Male  
DOB: 04/01/1954  
SSN: 516-68-6261  
POB: USA  
ADDRESS: 4 Glitter Gulch RD, Edgewood, NM 87015.

**I, Ariel R. Vazquez, being first duly sworn, hereby depose and state that the information contained herein is true and correct to the best of my knowledge and belief:**

This affidavit is provided in support of, and is part of, a Criminal Complaint and an Application for an Arrest Warrant for DALE N. SMITH ("A.K.A FIGHTSBEAR") for criminal violations of 16 U.S.C., § 703 and § 707(b), Migratory Bird Treaty Act; Title 16, U.S.C., § 668(a), Bald and Golden Eagle Protection Act; 16, U.S.C., § 3372(a)(1) and 16, U.S.C., § 3373 (d)(1)(B), Lacey Act.

**I. Background of Affiant.**

1. I am a Resident Agent in Charge (RAC) with the United States Fish and Wildlife Service (Service), Office of Law Enforcement, and am therefore an “investigative or law enforcement officer...” of the United States within the meaning of 16 U.S.C. § 3375. As such, I am a Federal Law Enforcement Officer within the meaning of Federal Rule of Criminal Procedure 41(a). I have been so employed for approximately 17 years. Prior to my appointment as a Special Agent with the Service on November 2006, I have worked as an U.S. Customs Inspector in Laredo, Texas and San Juan, Puerto Rico, as well as a Marine Interdiction Agent with Customs & Border Protection in Fajardo, Puerto Rico. Additionally, I hold a bachelor’s degree in social science with a minor in criminal justice from University of East in Puerto Rico and graduated with *Cum Laude* honors.

2. As a Special Agent with the Service, I have conducted and assisted in criminal and civil investigations, including many that involved violations of the Migratory Bird Treaty Act and the Lacey Act.

3. I am familiar, based on my training and experience, with the laws and regulations primarily enforced by the Service, such as the Lacey Act, 16 U.S.C. §§ 3371-3378, the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703-712 and the Bald and Golden Eagle Protection Act, Title 16, United States Code, Sections 668–668c.

4. During my employment with the Service, I have had extensive training in, and have conducted investigations into violations of Federal wildlife and related criminal laws.

## II. Legal Framework.

5. The Service has jurisdiction to enforce the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703—712. The Migratory Bird Treaty Act states, in part, that it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, except as allowed by regulation. A list of migratory birds, which includes but not limited to, bald eagle (*haliaeetus leucocephalus*), is found in 50 C.F.R. Part 10.13. Regulations governing permits to possess migratory birds are found in 50 C.F.R. Part 13 and 50 C.F.R. Part 21.

6. The Service has jurisdiction to enforce the Bald and Golden Eagle Protection Act, Title 16, United States Code, Sections 668—668c. The Eagle Protection Act states, in part, that it is unlawful for anyone to knowingly or with wanton disregard for the consequences of his act, to take, possess, sell, purchase, barter, offer to sell, purchase, or barter, or transport at any time or in any manner any bald eagle or golden eagle, alive or dead, or any part, nest or egg thereof, except as allowed by regulation. Regulations governing permits to take or possess eagles are found in 50 C.F.R. Part 13 and 50 C.F.R. Part 22. The Eagle Protection Act defines "take" as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb and defines

“transport” as ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation.

7. The Service has jurisdiction to enforce the Lacey Act, Title 16, United States Code, Section 3371 et. seq. Under Section 3373 (d)(1)(B) of the Lacey Act it is unlawful for any person to violate any provision of this chapter (other than subsections (b), (d), and (f) of section 3372 of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350, knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation.

### **III. Facts Establishing Probable Cause; Initiation of the Investigation.**

8. On March 7, 2014, U.S. Fish and Wildlife Service/Office of Law Enforcement (USFWS/OLE) Resident Agent in Charge (RAC) Ariel Vazquez received the information that subject, later identified as Dale N. Smith also known as FIGHTSBEAR, posted in a local posting website, Indian art crafts which some of them appeared to contain federally protected feathers. A total of fifteen (15) pages in Craigslist were captured.

### **IV. Facts Establishing Probable Cause; Ongoing Investigation.**

9. On March 07, 2014, in an undercover capacity, RAC Vazquez made undercover contact with DALE N. SMITH via text messaging and asked him *“Hey, What is the cost for the dream catcher, What kind of feathers are those and Is this made by native American?”* DALE N. SMITH responded by calling RAC Vazquez on his cellphone and clarified to RAC Vazquez that what he referred to as a dream catcher was a medicine wheel, that the feathers were bald eagle

(*Haliaeetus leucocephalus*) and told RAC Vazquez that the cost was \$1,000. Also, DALE N. SMITH told RAC Vazquez that he was Native American. Additionally, DALE N. SMITH asked RAC Vazquez to talk about the bald eagle feathers in person. RAC Vazquez used the covert name of "*Juan Rodriguez*." Then, DALE N. SMITH sent two (2) additional pictures of the medicine wheel via text messaging.

10. On March 11, 2014, at 2:29 p.m., RAC Vazquez contacted DALE N. SMITH on his cellphone. During the conversation, RAC Vazquez told DALE N. SMITH that RAC Vazquez's fictional boss in Mexico was interested in buying his art. DALE N. SMITH told RAC Vazquez that he had all the art in his residence and invited RAC Vazquez to his residence. DALE N. SMITH indicated that he wanted to talk personally.

11. On March 12, 2014, at 12.36 p.m., RAC Vazquez contacted DALE N. SMITH on his cellphone. During the conversation, RAC Vazquez cancelled the meeting to purchase the art with DALE N. SMITH on March 13, 2014, and postponed the meeting for March 20, 2014.

12. On March 19, 2014, at 9:15 a.m., RAC Vazquez contacted DALE N. SMITH on his cellphone. During the conversation, RAC Vazquez told DALE N. SMITH that he was available to meet to buy DALE N. SMITH's art and advised him that he wasn't asking for anything specific since RAC Vazquez didn't know about Indian art. RAC Vazquez asked DALE N. SMITH to meet at the Walmart in Edgewood, New Mexico, but DALE N. SMITH invited RAC Vazquez to visit his residence to show him a display of his art that DALE N. SMITH was willing to sell. Then, DALE N. SMITH asked RAC Vazquez to meet at the exit of Sedillo hill to show RAC Vazquez the way to DALE N. SMITH's residence. Both agreed to meet on March 20, 2014, at 11:00 a.m.

13. On March 20, 2014, 10:40 a.m, at the Phillips 66 gas station located at the Sedillo Exit, Sedillo, New Mexico, DALE N. SMITH met with RAC Vazquez. DALE N. SMITH asked RAC Vazquez to follow him to DALE N. SMITH 's residence. At DALE N. SMITH 's residence, RAC Vazquez met with DALE N. SMITH. During the meeting, DALE N. SMITH invited RAC Vazquez to the second story of his residence where DALE N. SMITH had a display of items on a table that he was willing to sell. DALE N. SMITH showed all the Indian Art that he was offering to sell to RAC Vazquez. First, DALE N. SMITH showed a feather fan and told RAC Vazquez that the feathers were bald eagle feathers. DALE N. SMITH explained that a permit is required to possess eagle feathers and the only way that the feathers can pass from his possession was if they were given as gifts and instructed RAC Vazquez to say that they were given to him as part of a ceremony even though they were sold and purchased. Then, DALE N. SMITH offered a headdress of bald eagle feathers for \$2,000 and voluntarily offered to take it into Mexico to avoid getting in trouble. DALE N. SMITH provided documentation about his arts and his water company. As part of the documentation provided, DALE N. SMITH indicated that he is an Elder of the Lakota/Sioux Tribe, of the Hunkpapa Band of Lakota. (Sitting Bull's Band) Dale is a direct descendant of Mato Wi' Kakaza' - "Fights the Bear", who was the next younger brother of Sitting Bull. During the meeting, DALE N. SMITH told RAC Vazquez that in case he gets questioned about the feathers to say that they were given to him as gifts and ask the person to call DALE N. SMITH . RAC Vazquez made an undercover purchase of a feather fan containing twenty-one (21) bald eagle feathers and a medicine wheel containing eight (8) bald eagle feathers for a \$1,000. Additionally, DALE N. SMITH gave RAC Vazquez a bald eagle feather and a dream catcher key chain as gifts. Additionally, DALE N. SMITH asked RAC Vazquez to send him an email to [FIGHTSBEAR1@comcast.net](mailto:FIGHTSBEAR1@comcast.net), so DALE N. SMITH can

email RAC Vazquez pictures of the head dress for RAC Vazquez's boss in Mexico. DALE N. SMITH assisted RAC Vazquez in loading the medicine wheel, the feather fan and the gifts into the undercover vehicle. Also, DALE N. SMITH provided directions on how to return to Albuquerque. At approximately 11:04 a.m., RAC Vazquez left DALE N. SMITH's residence. Photos of the bald eagle feather fan and the medicine wheel with eagle feathers as follows:





14. On March 21, 2014, RAC Vazquez sent all the feathers to the National Fish & Wildlife Forensics Laboratory (NFWFL) in Ashland, Oregon for identification.

15. On March 24, 2014, at 8:51 a.m., RAC Vazquez contacted DALE N. SMITH on his cellphone since DALE N. SMITH had earlier called RAC Vazquez. DALE N. SMITH wanted to know the status of the delivery of the medicine wheel with bald eagle feathers and the bald eagle feathers fan into Mexico. RAC Vazquez told DALE N. SMITH that they were on the way to Sinaloa, Mexico, since he taped the feathers under the rear seat to avoid detection at the border. RAC Vazquez told DALE N. SMITH that his boss will send the money after inspecting the feathers. DALE N. SMITH invited RAC Vazquez to have a beer, but RAC Vazquez told DALE N. SMITH that he was in El Paso, Texas. Additionally, DALE N. SMITH reminded RAC

Vazquez to send him an email so DALE N. SMITH can send him the pictures of the headdress with bald eagle feathers that was offered for \$2,000. RAC Vazquez told DALE N. SMITH to give him one (1) or two (2) weeks.

16. On March 24, 2014, RAC Vazquez sent an email to DALE N. SMITH S, which DALE N. SMITH replied by sending four (4) pictures of the headdress with what appeared to be bald eagle feathers. One (1) of the (4) four photos sent of the headdress as follows:



17. On March 24, 2014, RAC Vazquez received the notification from the NFWFL that all feathers reference herein were sent for examination and were determined to be from bald eagle.

18. On March 31, 2014, at 8:35 a.m., U.S. Fish and Wildlife Service/Office of Law Enforcement

(USFWS/OLE) Resident Agent in Charge (RAC) Ariel Vazquez contacted DALE N. SMITH on his cellphone since DALE N. SMITH had earlier called RAC Vazquez. DALE N. SMITH wanted to know if RAC Vazquez's boss, in Mexico, liked or did not like the bald eagle medicine wheel and bald eagle feather fan. Additionally, DALE N. SMITH claimed that he won't be able to go to Mexico to deliver the bald eagle feathers headdress since he can't obtain a passport. Also, DALE N. SMITH indicated that didn't have eagle talons as depicted on his USFWS permit shown to RAC Vazquez during the meeting in DALE N. SMITH's residence, but stated that he placed an order for two (2) birds (eagles). RAC Vazquez told DALE N. SMITH that RAC Vazquez would call him later that week to plan to buy the bald eagle feathers headdress.

19. On March 31, 2014, RAC Vazquez received the Morphology Examination Report from the NFWFL that all the black feathers were from a bald eagle.

20. On April 2, 2014, RAC Vazquez received an e-mail from Senior Forensic Scientist (SFC) Pepper Trail of the NFWFL responding to an e-mail that RAC Vazquez sent containing the pictures of the bald eagle headdress sent by DALE N. SMITH for identification. SFC Trail indicated, in his opinion from his review of the referenced photographs, the headdress is composed of the wing feathers of adult bald eagle (*Haliaeetus leucocephalus*). This is the same species and age class as the feathers that RAC Vazquez recently submitted to the NFWFL for identification.

21. On April 3, 2014, at 4:21 p.m., RAC Vazquez contacted DALE N. SMITH on his cellphone. During the conversation, RAC Vazquez told FIGHSBEAR the feathers were checked, RAC

Vazquez's boss in Mexico sent the \$2,000 to buy the bald eagle headdress that was initially offered by DALE N. SMITH, and a Mayan calendar, carved in rock, to give as a gift to DALE N. SMITH. RAC Vazquez asked where DALE N. SMITH felt more comfortable to meet. DALE N. SMITH said that he wanted to meet at his house since he would like to show the remaining items that RAC Vazquez didn't see during his first visit to DALE N. SMITH's residence. DALE N. SMITH mentioned that he was making a beaded necklace. RAC Vazquez told DALE N. SMITH to expect a phone call from RAC Vazquez on Monday or Tuesday (April 7 or 8, 2014) to meet FIGHSTBEAR on April 10, 2014 at 10:00 a.m. at DALE N. SMITH's residence. DALE N. SMITH agreed.

22. On April 7, 2014, at 8:17 a.m., RAC Vazquez contacted DALE N. SMITH on his cellphone since DALE N. SMITH had contacted RAC Vazquez the previous day. RAC Vazquez told DALE N. SMITH that RAC Vazquez's boss, from Mexico, sent money to buy the headdress initially offered. DALE N. SMITH offered to meet the same day with RAC Vazquez in El Paso, Texas, to sell the headdress, but RAC Vazquez told him that his office was next to Customs and Border Protection. During the conversation, DALE N. SMITH and RAC Vazquez referred to the eagle feather headdress as a hat. DALE N. SMITH agreed to meet on Thursday, April 10, 2014, around 11:00 a.m., at his residence located at 4 Glitter Gulch Road Edgewood, New Mexico, 87015, to sell the eagle headdress and offer other items to RAC Vazquez.

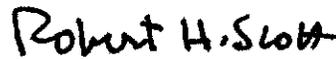
Based on the above facts, I believe there is probable cause that DALE N. SMITH has violated 16, U.S.C., § 703 and § 707(b), Migratory Bird Treaty Act; Title 16, U.S.C., § 668(a), Bald and

Golden Eagle Protection Act; 16, U.S.C., § 3372(a)(1) and 16, U.S.C., § 3373 (d)(1)(B), Lacey Act.



Ariel R. Vazquez  
Resident Agent in Charge  
U.S. Fish and Wildlife Service

Subscribed and sworn to before me this 7<sup>th</sup> day of April, 2014.



United States Magistrate Judge

**ROBERT HAYES SCOTT**  
**UNITED STATES MAGISTRATE JUDGE**